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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8
9 Jonathan M. Arther,

No. CV 20-00189-PHX-JAT (JFM)

10 Plaintiff,

11 v.

12 **ORDER**

13 Corizon Health, Inc., et al.,

14 Defendants.

15 On January 24, 2020, Plaintiff Jonathan M. Arther, who is not in custody, filed a
16 pro se civil rights Complaint pursuant to 42 U.S.C. § 1983 and an Application to Proceed
17 In District Court Without Prepaying Fees and Costs. In a February 14, 2020 Order, the
18 Court granted the Application to Proceed and dismissed the Complaint because Plaintiff
19 had failed to state a claim. The Court gave Plaintiff thirty days to file an amended
20 complaint that cured the deficiencies identified in the Order.

21 On March 23, 2020, Plaintiff filed a letter seeking an extension of time to file his
22 first amended complaint. In a March 27, 2020 Order, the Court granted Plaintiff's request
23 and gave him thirty days to file his first amended complaint.

24 On April 23, 2020, Plaintiff filed his First Amended Complaint (Doc. 8). The Court
25 will dismiss the First Amended Complaint with leave to amend.

26 **I. Statutory Screening of In Forma Pauperis Complaints**

27 Pursuant to 28 U.S.C. § 1915(e)(2), in a case in which a plaintiff has been granted
28 in forma pauperis status, the Court shall dismiss the case "if the court determines that . . .

1 (B) the action . . . (i) is frivolous or malicious; (ii) fails to state a claim on which relief may
 2 be granted; or (iii) seeks monetary relief against a defendant who is immune from such
 3 relief.”

4 A pleading must contain a “short and plain statement of the claim *showing* that the
 5 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2) (emphasis added). While Rule 8 does
 6 not demand detailed factual allegations, “it demands more than an unadorned, the-
 7 defendant-unlawfully-harmed-me accusation.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678
 8 (2009). “Threadbare recitals of the elements of a cause of action, supported by mere
 9 conclusory statements, do not suffice.” *Id.*

10 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a
 11 claim to relief that is plausible on its face.’” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*,
 12 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual content
 13 that allows the court to draw the reasonable inference that the defendant is liable for the
 14 misconduct alleged.” *Id.* “Determining whether a complaint states a plausible claim for
 15 relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial
 16 experience and common sense.” *Id.* at 679. Thus, although a plaintiff’s specific factual
 17 allegations may be consistent with a constitutional claim, a court must assess whether there
 18 are other “more likely explanations” for a defendant’s conduct. *Id.* at 681.

19 But as the United States Court of Appeals for the Ninth Circuit has instructed, courts
 20 must “continue to construe *pro se* filings liberally.” *Hebbe v. Pliler*, 627 F.3d 338, 342
 21 (9th Cir. 2010). A “complaint [filed by a pro se individual] ‘must be held to less stringent
 22 standards than formal pleadings drafted by lawyers.’” *Id.* (quoting *Erickson v. Pardus*, 551
 23 U.S. 89, 94 (2007) (per curiam)). If the Court determines that a pleading could be cured
 24 by the allegation of other facts, a pro se litigant is entitled to an opportunity to amend a
 25 complaint before dismissal of the action. *See Lopez v. Smith*, 203 F.3d 1122, 1127-29 (9th
 26 Cir. 2000) (en banc). Plaintiff’s First Amended Complaint will be dismissed for failure to
 27 state a claim, but because it may possibly be amended to state a claim, the Court will
 28 dismiss it with leave to amend.

1 **II. First Amended Complaint**

2 In his one-count First Amended Complaint, Plaintiff names as Defendants former
3 Arizona Department of Corrections (ADC) Director Charles Ryan, Assistant Director of
4 Health Richard Pratt, and Corizon Health, Inc., in their individual and official capacities.
5 Plaintiff alleges Defendant Ryan was responsible for providing adequate healthcare to
6 ADC prisoners, Defendant Pratt is responsible for overseeing healthcare for ADC
7 prisoners, and Defendant Corizon was, at the time, contracted to provide medical care for
8 ADC.

9 Plaintiff alleges a violation of the Eighth Amendment regarding his medical care.
10 He claims that after he was transferred to the Arizona State Prison Complex-
11 Florence (ASPC-Florence), the medical staff at the prison allowed him “to go 4 or more
12 weeks” without any medical attention following a major eye surgery. Plaintiff asserts that
13 after the transfer, he no longer received off-site visits with physicians or visits in the
14 medical department for six weeks, the pressure in his eye was not monitored by an off-site
15 physician or anyone in the medical department at ASPC-Florence, and he did not receive
16 his daily medication. He alleges that once he was provided with medication, it was “not
17 the same medication” and he began experiencing swelling, discomfort, burning, and a
18 runny eye. He claims that when he expressed his concerns to the medical staff, he was
19 threatened with reprimand if he refused the medication.

20 Plaintiff also contends ASPC-Florence’s medical staff and Defendant Corizon sent
21 him for a second eye surgery in 2018, but Defendant Corizon did not approve any medical
22 follow-up off-site visits after the second surgery and Plaintiff was never taken off-site for
23 a follow-up visit after the second surgery.

24 Plaintiff alleges he is now completely blind in his left eye. In his Request for Relief,
25 he seeks monetary damages, a declaration that the acts and omissions described in the First
26 Amended Complaint violated his constitutional rights, his attorney’s fees, and his costs of
27 suit.

28

1 **III. Failure to State a Claim**

2 Although pro se pleadings are liberally construed, *Haines v. Kerner*, 404 U.S. 519,
 3 520-21 (1972), conclusory and vague allegations will not support a cause of action. *Ivey*
 4 *v. Bd. of Regents of the Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982). Further, a
 5 liberal interpretation of a civil rights complaint may not supply essential elements of the
 6 claim that were not initially pled. *Id.*

7 **A. Defendants Ryan and Pratt**

8 **1. Individual Capacity Claims**

9 A suit against a defendant in his or her *individual* capacity seeks to impose personal
 10 liability upon the official. *Kentucky v. Graham*, 473 U.S. 159, 165-66 (1985). For a person
 11 to be liable in his or her individual capacity, “[a] plaintiff must allege facts, not simply
 12 conclusions, that show that the individual was personally involved in the deprivation of his
 13 civil rights.” *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998). A plaintiff must
 14 allege he suffered a specific injury as a result of specific conduct of a defendant and show
 15 an affirmative link between the injury and the conduct of that defendant. *See Rizzo v.*
 16 *Goode*, 423 U.S. 362, 371-72, 377 (1976). There is no respondeat superior liability under
 17 § 1983, and therefore, a defendant’s position as the supervisor of persons who allegedly
 18 violated Plaintiff’s constitutional rights does not impose liability. *Monell v. Dep’t of Soc.*
 19 *Servs. of New York*, 436 U.S. 658 (1978); *Hamilton v. Endell*, 981 F.2d 1062, 1067 (9th
 20 Cir. 1992); *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). “Because vicarious liability
 21 is inapplicable to *Bivens* and § 1983 suits, a plaintiff must plead that each Government-
 22 official defendant, through the official’s own individual actions, has violated the
 23 Constitution.” *Iqbal*, 556 U.S. at 676.

24 Plaintiff has not alleged that Defendants Ryan and Pratt personally participated in a
 25 deprivation of Plaintiff’s constitutional rights, were aware of a deprivation and failed to
 26 act, or formed policies that resulted in Plaintiff’s injuries. Thus, the Court will dismiss
 27 without prejudice Plaintiff’s individual capacity claims against Defendants Ryan and Pratt.
 28

2. Official Capacity Claims

Plaintiff cannot maintain a lawsuit for damages against ADC employees in their official capacities. *See Hafer v. Melo*, 502 U.S. 21, 27 (1991) (“State officials sued for damages in their official capacity are not ‘persons’ for purposes of the suit because they assume the identity of the government that employs them.”); *see also Gilbreath v. Cutter Biological, Inc.*, 931 F.2d 1320, 1327 (9th Cir. 1991).

Plaintiff may maintain a lawsuit against ADC employees in their official capacity for *prospective* declaratory and injunctive relief because under the doctrine set forth in *Ex parte Young*, 209 U.S. 123 (1908), the Eleventh Amendment “does not . . . bar actions for prospective declaratory or injunctive relief against state officers in their official capacities for their alleged violations of federal law.” *Coalition to Defend Affirmative Action v. Brown*, 674 F.3d 1128, 1134 (9th Cir. 2012). But not all declaratory and injunctive relief is prospective. The exception is intended to prevent continuing violations of federal law and “does not permit judgments against state officers declaring that they violated federal law in the past.” *Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 146 (1993); *see also Hindes v. F.D.I.C.*, 137 F.3d 148, 166 (3d Cir. 1998) (“The type of prospective relief permitted under *Young* is relief intended to prevent a continuing violation of federal law.”). Plaintiff is seeking retrospective, rather than prospective, declaratory relief.

Thus, the Court will dismiss Plaintiff's official capacity claims against Defendants Ryan and Pratt.

B. Defendant Corizon

To state a claim under § 1983 against a private entity performing a traditional public function, such as providing medical care for prisoners, a plaintiff must allege facts to support that his constitutional rights were violated as a result of a policy, decision, or custom promulgated or endorsed by the private entity. *See Tsao v. Desert Palace, Inc.*, 698 F.3d 1128, 1138-39 (9th Cir. 2012); *Buckner v. Toro*, 116 F.3d 450, 452 (11th Cir. 1997). A plaintiff must allege the specific policy or custom and how it violated his

1 constitutional rights. A private entity is not liable merely because it employs persons who
 2 allegedly violated a plaintiff's constitutional rights. *See Tsao*, 698 F.3d at 1138-39;
 3 *Buckner*, 116 F.3d at 452.

4 Plaintiff has not alleged that any of the conduct described in the First Amended
 5 Complaint was the result of a specific policy or custom of Defendant Corizon. Thus, the
 6 Court will dismiss without prejudice Defendant Corizon.

7 **IV. Leave to Amend**

8 For the foregoing reasons, Plaintiff's First Amended Complaint will be dismissed
 9 for failure to state a claim upon which relief may be granted. Within 30 days, Plaintiff may
 10 submit a second amended complaint to cure the deficiencies outlined above. The Clerk of
 11 Court will mail Plaintiff a court-approved form to use for filing a second amended
 12 complaint.¹

13 Plaintiff must clearly designate on the face of the document that it is the "Second
 14 Amended Complaint." The second amended complaint must be retyped or rewritten in its
 15 entirety and may not incorporate any part of the original Complaint or First Amended
 16 Complaint by reference. Plaintiff may include only one claim per count.

17 A second amended complaint supersedes the original Complaint and First Amended
 18 Complaint. *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992); *Hal Roach Studios v.*
 19 *Richard Feiner & Co.*, 896 F.2d 1542, 1546 (9th Cir. 1990). After amendment, the Court
 20 will treat the original Complaint and First Amended Complaint as nonexistent. *Ferdik*,
 21 963 F.2d at 1262. Any cause of action that was raised in the original Complaint or First
 22 Amended Complaint and that was voluntarily dismissed or was dismissed without
 23 prejudice is waived if it is not alleged in a second amended complaint. *Lacey v. Maricopa*
 24 *County*, 693 F.3d 896, 928 (9th Cir. 2012) (en banc).

25 If Plaintiff files a second amended complaint, Plaintiff must write short, plain
 26 statements telling the Court: (1) the constitutional right Plaintiff believes was violated;

27
 28 ¹ Although Plaintiff is not a prisoner, the Court suggests Plaintiff use this form to
 assist him in coherently presenting his claims to the Court.

1 (2) the name of the Defendant who violated the right; (3) exactly what that Defendant did
 2 or failed to do; (4) how the action or inaction of that Defendant is connected to the violation
 3 of Plaintiff's constitutional right; and (5) what specific injury Plaintiff suffered because of
 4 that Defendant's conduct. *See Rizzo*, 423 U.S. at 371-72, 377.

5 Plaintiff must repeat this process for each person he names as a Defendant. If
 6 Plaintiff fails to affirmatively link the conduct of each named Defendant with the specific
 7 injury suffered by Plaintiff, the allegations against that Defendant will be dismissed for
 8 failure to state a claim. **Conclusory allegations that a Defendant or group of**
 9 **Defendants has violated a constitutional right are not acceptable and will be**
 10 **dismissed.**

11 If Plaintiff files a second amended complaint, he should take note that not every
 12 claim by a prisoner relating to inadequate medical treatment states a violation of the Eighth
 13 Amendment. To state a § 1983 medical claim, a plaintiff must show (1) a "serious medical
 14 need" by demonstrating that failure to treat the condition could result in further significant
 15 injury or the unnecessary and wanton infliction of pain and (2) the defendant's response
 16 was deliberately indifferent. *Jett v. Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006).

17 "Deliberate indifference is a high legal standard." *Toguchi v. Chung*, 391 F.3d
 18 1051, 1060 (9th Cir. 2004). To act with deliberate indifference, a prison official must both
 19 know of and disregard an excessive risk to inmate health; "the official must both be aware
 20 of facts from which the inference could be drawn that a substantial risk of serious harm
 21 exists, and he must also draw the inference." *Farmer v. Brennan*, 511 U.S. 825, 837 (1994).
 22 Deliberate indifference in the medical context may be shown by a purposeful act or failure
 23 to respond to a prisoner's pain or possible medical need and harm caused by the
 24 indifference. *Jett*, 439 F.3d at 1096. Deliberate indifference may also be shown when a
 25 prison official intentionally denies, delays, or interferes with medical treatment or by the
 26 way prison doctors respond to the prisoner's medical needs. *Estelle v. Gamble*, 429 U.S.
 27 97, 104-05 (1976); *Jett*, 439 F.3d at 1096.

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1 Deliberate indifference is a higher standard than negligence or lack of ordinary due
 2 care for the prisoner's safety. *Farmer*, 511 U.S. at 835. "Neither negligence nor gross
 3 negligence will constitute deliberate indifference." *Clement v. California Dep't of Corr.*,
 4 220 F. Supp. 2d 1098, 1105 (N.D. Cal. 2002) (emphasis added); *see also Broughton v.*
 5 *Cutter Labs.*, 622 F.2d 458, 460 (9th Cir. 1980) (mere claims of "indifference,"
 6 "negligence," or "medical malpractice" do not support a claim under § 1983). "A
 7 difference of opinion does not amount to deliberate indifference to [a plaintiff's] serious
 8 medical needs." *Sanchez v. Vild*, 891 F.2d 240, 242 (9th Cir. 1989). A mere delay in
 9 medical care, without more, is insufficient to state a claim against prison officials for
 10 deliberate indifference. *See Shapley v. Nevada Bd. of State Prison Comm'rs*, 766 F.2d 404,
 11 407 (9th Cir. 1985). The indifference must be substantial. The action must rise to a level
 12 of "unnecessary and wanton infliction of pain." *Estelle*, 429 U.S. at 105.

13 **V. Warnings**

14 **A. Address Changes**

15 Plaintiff must file and serve a notice of a change of address in accordance with Rule
 16 83.3(d) of the Local Rules of Civil Procedure. Plaintiff must not include a motion for other
 17 relief with a notice of change of address. Failure to comply may result in dismissal of this
 18 action.

19 **B. Possible Dismissal**

20 If Plaintiff fails to timely comply with every provision of this Order, including these
 21 warnings, the Court may dismiss this action without further notice. *See Ferdik*, 963 F.2d
 22 at 1260-61 (a district court may dismiss an action for failure to comply with any order of
 23 the Court).

24 **IT IS ORDERED:**

25 (1) The First Amended Complaint (Doc. 8) is **dismissed** for failure to state a
 26 claim. Plaintiff has **30 days** from the date this Order is filed to file a second amended
 27 complaint in compliance with this Order.

28

(2) If Plaintiff fails to file a second amended complaint within 30 days, the Clerk of Court must, without further notice, enter a judgment of dismissal of this action with prejudice and deny any pending unrelated motions as moot.

(3) The Clerk of Court must mail Plaintiff a court-approved form for filing a civil rights complaint by a prisoner.

Dated this 28th day of April, 2020.



James A. Teilborg
Senior United States District Judge

Instructions for a Prisoner Filing a Civil Rights Complaint in the United States District Court for the District of Arizona

1. **Who May Use This Form.** The civil rights complaint form is designed to help incarcerated persons prepare a complaint seeking relief for a violation of their federal civil rights. These complaints typically concern, but are not limited to, conditions of confinement. **This form should not be used to challenge your conviction or sentence.** If you want to challenge a state conviction or sentence, you should file a petition under 28 U.S.C. § 2254 for a writ of habeas corpus by a person in state custody. If you want to challenge a federal conviction or sentence, you should file a motion under 28 U.S.C. § 2255 to vacate sentence in the federal court that entered the judgment.
2. **The Form.** **Local Rule of Civil Procedure (LRCiv) 3.4(a) provides that complaints by incarcerated persons must be filed on the court-approved form.** The form must be typed or neatly handwritten. The form must be completely filled in to the extent applicable. All questions must be answered clearly and concisely in the appropriate space on the form. If needed, you may attach additional pages, **but no more than fifteen additional pages**, of standard letter-sized paper. You must identify which part of the complaint is being continued and number all pages. If you do not fill out the form properly, you will be asked to submit additional or corrected information, which may delay the processing of your action. You do not need to cite law.
3. **Your Signature.** You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
4. **The Filing and Administrative Fees.** The total fees for this action are \$400.00 (\$350.00 filing fee plus \$50.00 administrative fee). If you are unable to immediately pay the fees, you may request leave to proceed in forma pauperis. Please review the “Information for Prisoners Seeking Leave to Proceed with a (Non-Habeas) Civil Action in Federal Court In Forma Pauperis Pursuant to 28 U.S.C. § 1915” for additional instructions.
5. **Original and Judge's Copy.** You must send an **original plus one copy** of your complaint and of any other documents submitted to the Court. You must send one additional copy to the Court if you wish to have a file-stamped copy of the document returned to you. All copies must be identical to the original. Copies may be legibly handwritten. **This section does not apply to inmates housed at an Arizona Department of Corrections facility that participates in electronic filing.**
6. **Where to File.** You should file your complaint in the division **where you were confined when your rights were allegedly violated.** *See* LRCiv 5.1(a) and 77.1(a). If you were confined in Maricopa, Pinal, Yuma, La Paz, or Gila County, file in the Phoenix Division. If you were confined in Apache, Navajo, Coconino, Mohave, or Yavapai County, file in the Prescott Division. If you were confined in Pima, Cochise, Santa Cruz, Graham, or Greenlee County, file in the Tucson Division. **Mail the original and one copy of the complaint with the \$400 filing and administrative fees or the application to proceed in forma pauperis to:**

Phoenix & Prescott Divisions:
U.S. District Court Clerk
U.S. Courthouse, Suite 130
401 West Washington Street, SPC 10
Phoenix, Arizona 85003-2119

OR

Tucson Division:
U.S. District Court Clerk
U.S. Courthouse, Suite 1500
405 West Congress Street
Tucson, Arizona 85701-5010

7. **Change of Address.** You must immediately notify the Court and the defendants in writing of any change in your mailing address. **Failure to notify the Court of any change in your mailing address may result in the dismissal of your case.**

8. **Certificate of Service.** You must furnish the defendants with a copy of any document you submit to the Court (except the initial complaint and application to proceed in forma pauperis). Each original document (except the initial complaint and application to proceed in forma pauperis) must include a certificate of service on the last page of the document stating the date a copy of the document was mailed to the defendants and the address to which it was mailed. *See Fed. R. Civ. P. 5(a), (d).* Any document received by the Court that does not include a certificate of service may be stricken. **This section does not apply to inmates housed at an Arizona Department of Corrections facility that participates in electronic filing.**

A certificate of service should be in the following form:

I hereby certify that a copy of the foregoing document was mailed
this _____ (month, day, year) to:

Name: _____
Address: _____

Attorney for Defendant(s)

(Signature)

9. **Amended Complaint.** If you need to change any of the information in the initial complaint, you must file an amended complaint. The amended complaint must be written on the court-approved civil rights complaint form. You may file one amended complaint without leave (permission) of Court within 21 days after serving it or within 21 days after any defendant has filed an answer, whichever is earlier. *See Fed. R. Civ. P. 15(a).* Thereafter, you must file a motion for leave to amend and lodge (submit) a proposed amended complaint. LRCiv 15.1. In addition, an amended complaint may not incorporate by reference any part of your prior complaint. LRCiv 15.1(a)(2). **Any allegations or defendants not included in the amended complaint are considered dismissed.** All amended complaints are subject to screening under the Prison Litigation Reform Act; screening your amendment will take additional processing time.

10. **Exhibits.** You should not submit exhibits with the complaint or amended complaint. Instead, the relevant information should be paraphrased. You should keep the exhibits to use to support or oppose a motion to dismiss, a motion for summary judgment, or at trial.

11. **Letters and Motions.** It is generally inappropriate to write a letter to any judge or the staff of any judge. The only appropriate way to communicate with the Court is by filing a written pleading or motion.

12. Completing the Civil Rights Complaint Form.

HEADING:

1. Your Name. Print your name, prison or inmate number, and institutional mailing address on the lines provided.
2. Defendants. If there are **four or fewer** defendants, print the name of each. If you name **more than four** defendants, print the name of the first defendant on the first line, write the words “and others” on the second line, and attach an additional page listing the names of **all** of the defendants. Insert the additional page after page 1 and number it “1-A” at the bottom.
3. Jury Demand. If you want a jury trial, you must write “JURY TRIAL DEMANDED” in the space below “CIVIL RIGHTS COMPLAINT BY A PRISONER.” Failure to do so may result in the loss of the right to a jury trial. A jury trial is not available if you are seeking only injunctive relief.

Part A. JURISDICTION:

1. Nature of Suit. Mark whether you are filing the complaint pursuant to 42 U.S.C. § 1983 for state, county, or city defendants; “*Bivens v. Six Unknown Federal Narcotics Agents*” for federal defendants; or “other.” If you mark “other,” identify the source of that authority.
2. Location. Identify the institution and city where the alleged violation of your rights occurred.
3. Defendants. Print all of the requested information about each of the defendants in the spaces provided. If you are naming more than four defendants, you must provide the necessary information about each additional defendant on separate pages labeled “2-A,” “2-B,” etc., at the bottom. Insert the additional page(s) immediately behind page 2.

Part B. PREVIOUS LAWSUITS:

You must identify any other lawsuit you have filed in either state or federal court while you were a prisoner. Print all of the requested information about each lawsuit in the spaces provided. If you have filed more than three lawsuits, you must provide the necessary information about each additional lawsuit on a separate page. Label the page(s) as “2-A,” “2-B,” etc., at the bottom of the page and insert the additional page(s) immediately behind page 2.

Part C. CAUSE OF ACTION:

You must identify what rights each defendant violated. The form provides space to allege three separate counts (**one violation per count**). If you are alleging more than three counts, you must provide the necessary information about each additional count on a separate page. Number the additional pages “5-A,” “5-B,” etc., and insert them immediately behind page 5. Remember that you are limited to a total of fifteen additional pages.

1. **Counts.** You must identify which civil right was violated. **You may allege the violation of only one civil right per count.**
2. **Issue Involved.** Check the box that most closely identifies the issue involved in your claim. **You may check only one box per count.** If you check the box marked "Other," you must identify the specific issue involved.
3. **Supporting Facts.** After you have identified which civil right was violated, you must state the supporting facts. Be as specific as possible. You must state what each individual defendant did to violate your rights. If there is more than one defendant, you must identify which defendant did what act. You also should state the date(s) on which the act(s) occurred, if possible.
4. **Injury.** State precisely how you were injured by the alleged violation of your rights.
5. **Administrative Remedies.** You must exhaust any available administrative remedies before you file a civil rights complaint. *See 42 U.S.C. § 1997e.* Consequently, you should disclose whether you have exhausted the inmate grievance procedures or administrative appeals for each count in your complaint. If the grievance procedures were not available for any of your counts, fully explain why on the lines provided.

Part D. REQUEST FOR RELIEF:

Print the relief you are seeking in the space provided.

SIGNATURE:

You must sign your name and print the date you signed the complaint. Failure to sign the complaint will delay the processing of your action. Unless you are an attorney, you may not bring an action on behalf of anyone but yourself.

FINAL NOTE

You should follow these instructions carefully. Failure to do so may result in your complaint being stricken or dismissed. All questions must be answered concisely in the proper space on the form. If you need more space, you may attach no more than fifteen additional pages. But the form must be completely filled in to the extent applicable. If you attach additional pages, be sure to identify which section of the complaint is being continued and number the pages.

Name and Prisoner/Booking Number _____

Place of Confinement _____

Mailing Address _____

City, State, Zip Code _____

(Failure to notify the Court of your change of address may result in dismissal of this action.)

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

_____,
(Full Name of Plaintiff)

Plaintiff,

v.

(1) _____,
(Full Name of Defendant)

(2) _____,

(3) _____,

(4) _____,

Defendant(s).

CASE NO. _____

(To be supplied by the Clerk)

**CIVIL RIGHTS COMPLAINT
BY A PRISONER**

Original Complaint
 First Amended Complaint
 Second Amended Complaint

Check if there are additional Defendants and attach page 1-A listing them.

A. JURISDICTION

1. This Court has jurisdiction over this action pursuant to:

28 U.S.C. § 1343(a); 42 U.S.C. § 1983
 28 U.S.C. § 1331; *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971).
 Other: _____.

2. Institution/city where violation occurred: _____.

B. DEFENDANTS

1. Name of first Defendant: _____ The first Defendant is employed as: _____ at _____.
(Position and Title) (Institution)
2. Name of second Defendant: _____ The second Defendant is employed as: _____
as: _____ at _____.
(Position and Title) (Institution)
3. Name of third Defendant: _____ The third Defendant is employed as: _____ at _____.
(Position and Title) (Institution)
4. Name of fourth Defendant: _____ The fourth Defendant is employed as: _____ at _____.
(Position and Title) (Institution)

If you name more than four Defendants, answer the questions listed above for each additional Defendant on a separate page.

C. PREVIOUS LAWSUITS

1. Have you filed any other lawsuits while you were a prisoner? Yes No
2. If yes, how many lawsuits have you filed? _____. Describe the previous lawsuits:
 - a. First prior lawsuit:
 1. Parties: _____ v. _____
 2. Court and case number: _____
 3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) _____.
 - b. Second prior lawsuit:
 1. Parties: _____ v. _____
 2. Court and case number: _____
 3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) _____.
 - c. Third prior lawsuit:
 1. Parties: _____ v. _____
 2. Court and case number: _____
 3. Result: (Was the case dismissed? Was it appealed? Is it still pending?) _____.

If you filed more than three lawsuits, answer the questions listed above for each additional lawsuit on a separate page.

D. CAUSE OF ACTION

COUNT I

1. State the constitutional or other federal civil right that was violated: _____

2. **Count I.** Identify the issue involved. Check **only one**. State additional issues in separate counts.

Basic necessities Mail Access to the court Medical care
 Disciplinary proceedings Property Exercise of religion Retaliation
 Excessive force by an officer Threat to safety Other: _____.

3. Supporting Facts. State as briefly as possible the FACTS supporting Count I. Describe exactly what each Defendant did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.

4. **Injury.** State how you were injured by the actions or inactions of the Defendant(s).

5. Administrative Remedies:

a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? Yes No

b. Did you submit a request for administrative relief on Count I? Yes No

c. Did you appeal your request for relief on Count I to the highest level? Yes No

d. If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. _____

COUNT II

1. State the constitutional or other federal civil right that was violated: _____

2. **Count II.** Identify the issue involved. Check **only one**. State additional issues in separate counts.

Basic necessities Mail Access to the court Medical care
 Disciplinary proceedings Property Exercise of religion Retaliation
 Excessive force by an officer Threat to safety Other: _____.

3. **Supporting Facts.** State as briefly as possible the FACTS supporting Count II. Describe exactly what **each Defendant** did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.

4. **Injury.** State how you were injured by the actions or inactions of the Defendant(s).

5. Administrative Remedies.

a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? Yes No

b. Did you submit a request for administrative relief on Count II? Yes No

c. Did you appeal your request for relief on Count II to the highest level? Yes No

d. If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. _____

COUNT III

1. State the constitutional or other federal civil right that was violated: _____
_____.
_____.

2. **Count III.** Identify the issue involved. Check **only one**. State additional issues in separate counts.

Basic necessities Mail Access to the court Medical care
 Disciplinary proceedings Property Exercise of religion Retaliation
 Excessive force by an officer Threat to safety Other: _____.

3. **Supporting Facts.** State as briefly as possible the FACTS supporting Count III. Describe exactly what **each Defendant** did or did not do that violated your rights. State the facts clearly in your own words without citing legal authority or arguments.

4. **Injury.** State how you were injured by the actions or inactions of the Defendant(s).

5. **Administrative Remedies.**

- a. Are there any administrative remedies (grievance procedures or administrative appeals) available at your institution? Yes No
- b. Did you submit a request for administrative relief on Count III? Yes No
- c. Did you appeal your request for relief on Count III to the highest level? Yes No
- d. If you did not submit or appeal a request for administrative relief at any level, briefly explain why you did not. _____

If you assert more than three Counts, answer the questions listed above for each additional Count on a separate page.

E. REQUEST FOR RELIEF

State the relief you are seeking:

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____
DATE

SIGNATURE OF PLAINTIFF

(Name and title of paralegal, legal assistant, or other person who helped prepare this complaint)

(Signature of attorney, if any)

(Attorney's address & telephone number)

ADDITIONAL PAGES

All questions must be answered concisely in the proper space on the form. If you need more space, you may attach no more than fifteen additional pages. But the form must be completely filled in to the extent applicable. If you attach additional pages, be sure to identify which section of the complaint is being continued and number all pages.